

Center for Hawaiian Sovereignty Studies
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Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

For hearing Wednesday, March 18, 2015

Re: SB1166, SD2 RELATING TO THE PENAL CODE.

Provides that the preparation of a corpse for burial or cremation in a manner consistent with traditional Hawaiian cultural customs and practices and the burial or cremation of a corpse prepared consistent with traditional Hawaiian custom and practice shall not constitute the abuse of a corpse within the penal code. Effective date 1/7/2059. (SD2)

TESTIMONY SUPPORTING THE INTENT OF THIS BILL BUT NOTING THAT IT NEEDS AMENDMENTS TO BROADEN IT IN ONE RESPECT AND TO NARROW IT IN ANOTHER RESPECT

I support the intent of this bill, which I believe is to respect the right of Native Hawaiians to preserve their ancient culture by engaging in

ancient ways of treating a corpse without being punished for violating modern law regarding abuse of a corpse. But shouldn't this bill grant that same equivalent culture-based right to people who are not Native Hawaiian? Also, would we want this bill to authorize a Native Hawaiian to use ancient cultural practices to abuse a corpse when the dead person would have strongly objected, or perhaps was not even Native Hawaiian?

As this bill notes, current law says a person commits the offense of abuse of a corpse if he treats a human corpse "in a way that the person knows would outrage ordinary family sensibilities."

There were many different ways corpses were treated in ancient Hawaiian culture. One of the most gruesome ways, judging by modern mainstream culture, was to put the corpse into an imu (earthen oven) and bake it until the flesh fell off the bones; and then gather the long bones (arms and legs) and wrap them in kapa cloth, enclose them in a coconut-fiber casket shaped like a miniature human, and bury the "ka'ai" secretly in a cave. Clearly that way of treating a corpse "would outrage ordinary family sensibilities" and be subject to prosecution for abuse of a corpse under the existing statute. Is there any Native Hawaiian now living who would like his own corpse to be handled in that way? If so, his surviving family members should be able to do so without fear of prosecution.

However, the bill is too narrow, because it does not grant a similar right to people of other races, religions, and cultures. Shouldn't Christians, Jews, Buddhists, Muslims, and people who have no religious affiliation have the same right to respectfully treat the corpses of their family members or fellow religionists in accordance with religious or cultural customs without fearing prosecution for "abuse of a corpse"? Perhaps a man who was never circumcised would have liked to have that ritual performed upon his corpse before he goes to meet his maker -- a decision his family members should be able to make on his

behalf even if he never wrote it in his will. Perhaps a scholar of Egyptology would like his next of kin to eviscerate his corpse and mummify it. Perhaps someone would like his body to be immediately frozen and put in a cryogenic capsule to be preserved until two centuries later when the disease that killed him can be cured after he is revived.

The bill is also too broad, because it would give license to any Native Hawaiian to treat a corpse according to ancient Hawaiian practices even if the dead person would strongly disapprove of his corpse being treated that way -- perhaps the dead person was not Native Hawaiian at all; or perhaps he was a Native Hawaiian who was nevertheless a Christian, Jew, Buddhist, Muslim or person with no religious affiliation, who did not practice or believe in the ancient Hawaiian culture or religion and would have considered the ancient Hawaiian customs repulsive. The way the bill is written would give license to a zealous practitioner of ancient Hawaiian burial methods to inflict those methods on the corpse even if the person who died would have strenuously objected.

I am not a lawyer, but there are many lawyers available to the legislature. Please improve the language in this bill by taking account of the two areas of improvement I have described; or else defer the bill indefinitely.



KO'OLAUPOKO HAWAIIAN CIVIC CLUB

March 16, 2015

To: Rep. Kaniela Ing, Chair / & Members
Ocean Resources & Hawaiian Affairs Committee

From: Alice P. Hewett, President
Ko'olaupoko Hawaiian Civic Club

Re: S.B. 1166, S.D.2 – Relating to the Penal Code – Support

Aloha Chair Ing, Vice Chair Lowen and Members of this Committee:

My name is Leialoha Kaluhiwa, and I am here to testify on behalf of our president, Aunty Alice Hewett, and the Ko'olaupoko Hawaiian Civic Club.

We strongly support Senate Bill 1166, Senate Draft 2, but ask your committee to change the effective date of this measure to “upon approval”, rather than the 2059 date in this Senate draft.

As you know, from having reviewed the companion bill, H.B. 1297 when it came before you, this legislation would help our culture, by reviving a Hawaiian traditional practice. It would respect our `aina, by eliminating the need for embalming chemicals that could harm our land, and it would reduce the cost of funerals and ease the burden on island families.

We believe this burial practice would be helpful for Native Hawaiians as well as anyone else, non-Hawaiians, who may see this as a wise and practical option for interment of our deceased loved ones.

We urge you to amend this bill and pass it out of committee.

Mahalo for hearing this legislation, and allowing us to present our mana`o.

The Ko'olaupoko Hawaiian Civic Club was established in 1937 and is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians. Its membership is open to people of Hawaiian ancestry and those who are “Hawaiian at heart”.

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Ko`olau Foundation

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March 16, 2015

To: Rep. Kaniela Ing, Chair
Rep. Nicole E. Lowen, Vice Chair / & Members
Committee on Ocean Resources & Hawaiian Affairs

From: Mahealani Cypher
Ko`olau Foundation

Subject: Support for S.B. 1166, S.D. 2 – Relating to the Penal Code

Aloha Chair Ing, Vice Chair Lowen and Members of the Committee:

The Ko`olau Foundation offers its strong support for your approval of Senate Bill 1166, Senate Draft 2, which would update the state penal code to address traditional and customary burial practices of Native Hawaiians.

We have one exception – that the effective date be changed either to January 2016 or upon being signed into law. We ask that your committee revise the date to have this law take effect at the earliest possible date.

We thank the committee for your earlier review and passage of the companion legislation, H.B. 1297, H.D. 1, which calls for the law to take effect upon approval.

Mahalo for allowing us to share our mana`o with you.

omhtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 7:24 PM
To: omhtestimony
Cc: amybrinker@mac.com
Subject: *Submitted testimony for SB1166 on Mar 18, 2015 10:00AM*

Categories: Late

LATE

SB1166

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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